

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: January 04, 2019

CASE NO(S): PL180494

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Christopher Duncanson-Hales
Appellant: Sudbury Business Improvement Area
Appellant: Tom Fortin
Subject: Proposed Official Plan Amendment No. OPA
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Municipality: City of Greater Sudbury
OMB Case No.: PL180494
OMB File No.: PL180494
OMB Case Name: Duncanson-Hales v. Greater Sudbury (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Christopher Duncanson-Hales
Appellant: Sudbury Business Improvement Area
Appellant: Tom Fortin
Subject: By-law No. 2018-61Z (Casino)
Municipality: City of Greater Sudbury
OMB Case No.: PL180494
OMB File No.: PL180495

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Sudbury Business Improvement Area
Appellant: Tom Fortin
Appellant: Minnow Lake Restoration Group Inc.
Subject: By-law No. 2018-62Z (Parking)

Municipality: City of Greater Sudbury
 OMB Case No.: PL180494
 OMB File No.: PL180496

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Sudbury Business Improvement Area
 Appellant: Tom Fortin
 Appellant: Steve May
 Subject: By-law No. 2018-72Z (Arena)
 Municipality: City of Greater Sudbury
 OMB Case No.: PL180494
 OMB File No.: PL180497

Heard: November 6, 2018 in Sudbury, Ontario

APPEARANCES:

Parties

Counsel / Representative*

City of Greater Sudbury ("City")	Stephen Watt
Christopher Duncanson-Hales ("Hales")	Gordon Petch
Tom Fortin ("Fortin")	Gordon Petch
Sudbury Business Improvement Area (the "BIA")	Gordon Petch
Steve May ("May")	Self-Represented
Minnow Lake Restoration Group ("Minnow Lake")	John Lindsay*
Gateway Casinos and Entertainment Limited ("Gateway")	Andrew Jeanrie
1916596 Ontario Limited ("Applicant")	Daniel Artenosi

DECISION DELIVERED BY C. CONTI, DAVID L. LANTHIER AND S. JACOBS AND ORDER OF THE TRIBUNAL

CASE MANAGEMENT CONFERENCE DECISION AND ORDER—INTRODUCTION

[1] This Decision and Order is issued following the Case Management Conference (“CMC”) before the Local Planning Appeal Tribunal (“Tribunal”) conducted pursuant to s. 33(1) of the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”) and Rules 26.17 to 26.26 of the Tribunal’s *Rules of Practice and Procedure* (“Tribunal Rules”) for the Appeals brought in the above-referenced Case Files (the “Appeals”).

[2] The Appeals before the Tribunal have been brought pursuant to s. 17(24) and 34(19) of the *Planning Act* (“Act”). The Applicant applied to the City for a site-specific amendment to the City’s Official Plan (the “OPA”), and certain site-specific amendments to the City’s comprehensive Zoning By-law No. 2010-100Z (the “ZBLAs”) to permit a development that would include a place of amusement in the form of a casino, as well as an arena and a parking facility. Appeals were filed by Christopher Duncanson-Hales (“Hales”) against the approval of the casino, Tom Fortin and the BIA against the entire proposal, by Steven May against the approval of the arena, and Minnow Lake against the approval of the parking facility.

[3] The site is within an industrial plan of subdivision within the City. The proposed OPA would permit the development of a place of amusement in an area designated as General Industrial. The ZBLA for the casino would rezone the location of the casino from M1-1, Business Industrial to M1-1(16), Business Industrial Special, to permit the casino and associated facilities. The ZBLA for the parking facility would rezone lands from M2, Light Industrial to M2(15), Light Industrial Special and from M3, Heavy Industrial to M3(15), Heavy Industrial Special to permit the parking area. The ZBLA for the arena changes the zoning of the location of the arena from M1-1 Business Industrial and M2 Light Industrial to M1– 1(17), Business Industrial Special which adds permission for the arena to the area.

[4] The development is to occur on lands owned by the Applicant, on Lots 9 and 10, in the Township of Neelon. The OPA was adopted by City Council on April 10, 2018 and

the ZBLAs were enacted on April 24, 2018. The Appellants then appealed those decisions.

[5] The Affidavit of Service of the Notice of the CMC is marked and filed as Exhibit 1 to the hearing.

[6] Prior to the CMC, Mr. May had communicated concerns to the Tribunal regarding the disclosure of private information by the City within its Case Synopsis, and had indicated that he would be raising such matters at the CMC and requesting a remedy from the Tribunal to address the disclosure. At the outset of the CMC, Mr. May advised the Tribunal that those concerns had now been resolved with the City and that no determination or order was required from the Tribunal with regard to such matters.

[7] The Tribunal was advised by Mr. Petch that his clients had requested an official verbatim reporter to be present to record the CMC hearing event for the purposes of creating a transcript if required. The Tribunal was advised, at the conclusion of the CMC, that none of the parties were requesting a copy of the transcript. The Tribunal advised that in the event any party subsequently requested a copy of the transcript of the CMC hearing, a copy of the transcript is to be provided to the Tribunal in electronic format only, at the cost of the party requesting the transcript.

[8] At the beginning of the CMC, the Tribunal briefly described the fundamental changes for resolving certain types of planning appeals that have resulted from the provisions of LPATA and changes to the Act, which came into effect on April 3, 2018. Under the new provisions, the grounds of appeal for some types of planning instruments including those subject to these appeals are limited and must relate to consistency with a policy statement issued under s. 3(1) of the Act, conformity or conflict with a Provincial Plan, or conformity with an applicable Official Plan. Case Management Conferences are mandatory for appeals of official plan amendments and zoning by-law amendments, and a number of procedural changes have been enacted through the legislation for hearings of these types of appeals.

REQUESTS FOR PARTY STATUS

[9] In accordance with s. 40 of LPATA, the Tribunal received written submissions and requests to participate in the hearing of the Appeals from Gateway and the Applicant. No other submissions were received.

[10] After hearing submissions from Gateway, the Applicant, the Appellants and the City, none of whom objected, the Tribunal granted party status to:

(a) Gateway Casinos and Entertainment Limited; and

(b) 1916596 Ontario Limited.

MOTIONS

[11] In the course of the CMC, the Tribunal was advised respectively by the parties that there were certain matters that required resolution by the Tribunal before a number of procedural steps could be further undertaken. Mr. Petch, with the support of Mr. Watt, requested that the Tribunal schedule dates to hear motions to determine if the Tribunal would permit Hales, Fortin and the BIA to file a response to the City's Case Synopsis, as well as Motions regarding the Tribunal's jurisdiction to make determinations about a number of issues raised in the Hales, Fortin and the BIA Case Synopsis. Mr. Petch contended that in the interest of fairness, he should be permitted to respond to matters in the City's Case Synopsis that had not been identified previously. Mr. Watt maintained that a number of the issues identified in the Case Synopsis submitted by Mr. Petch involved matters not related to the Act and the more limited grounds for appeal set out in the Act as a result of Bill 139. Through the submissions of the parties and discussion, the Tribunal determined that two other Motions are also required.

[12] After hearing the submissions of the parties, the Tribunal ordered that the following Motions should be brought forward:

1. A Motion by the Appellants, Hales, Fortin, and the BIA, to allow them to file a response to the City's Case Synopsis.
2. A Motion by the City to determine if Issues 1, 2, 3, 4, 18 and 19 in the Case Synopsis of Hales, Fortin and the BIA involve matters that are within the Tribunal's jurisdiction under s. 17(24) and 34(19) of the Act. .
3. Motions, or a combined Motion by Mr. Artenosi and Mr. Jeanrie, to allow them to file Case Synopses on behalf of their clients.
4. A Motion by Mr. Petch regarding Issue 19 in the Case Synopsis of Hales, Fortin and the BIA requesting the Tribunal to order the production of certain documents and agreements regarding the City's submissions to the Ontario Lottery and Gaming Corporation and related to the requirements of O. Reg. 81/12 of the *Ontario Lottery and Gaming Corporation Act*, 1999, S.O. 1999, c. 12, Sched. L regarding the location of the proposed casino and the determination that it is an appropriate candidate site. (The City contended that the issue is beyond the Tribunal's jurisdiction and the production should not be ordered.)

[13] In the interest of efficiency, the Tribunal ordered that the above Motions should be in writing. Since the above matters are generally procedural, the Tribunal indicated that additional affidavits did not need to be provided in conjunction with these Motions and that the Tribunal could dispose of them on the basis of the submissions.

[14] At the CMC, the following schedule was determined for filing the motion: December 3, 2018 for the original motions; December 12, 2018 for filing responses; and December 19, 2018 for filing replies. Subsequent to the CMC, the parties requested and were granted by the Tribunal a two-day extension for filing the Motions with an indication that they may wish to extend the other deadlines by two days if required. Therefore the date for filing the Motions was extended to December 5, 2018 and there has been no indication from the parties that the two-day extensions to the other dates

are required.

[15] Also, after receiving Motion No. 1 from Hales, Fortin and the BIA, the Tribunal determined that it was necessary for the Motion to be resubmitted. The schedule for filing was determined as December 20, 2018 for submission, December 28, 2018 for responses, and January 4, 2019 for reply.

[16] The Tribunal notes that there has been no determination to consolidate the appeals. Therefore not all parties that attended the CMC are parties to all of the Motions. Motions No. 2 and 4 regarding the jurisdiction of the Tribunal are primarily related to the casino proposal. Minnow Lake and Mr. May did not appeal the approval of the planning instruments for the casino and therefore they are not parties to the casino appeals and should not provide responses to Motions No. 2 and 4.

MEDIATION AND SETTLEMENT

[17] As required by s. 39(2) of LPATA, the Tribunal addressed with the parties the opportunities for settlement and the possibility of mediation as a means to resolve the Appeals. The Tribunal was advised by the Appellants that they were not prepared to engage in mediation at this time, given the outstanding issues raised in the Motions. The Appellants advised that they might be prepared to do so once the Tribunal issued its ruling on the Motions. The City advised that it was prepared to become involved in mediation if the Appellants were so interested. The Applicant and Gateway also expressed an interest in mediation if all other parties were interested.

[18] Given the position expressed by the Appellants, and in order not to further delay the hearing of the Appeals, the parties are urged to discuss the possibility of mediation following the issuance of the ruling on the Motions and to be prepared to again discuss this alternative at the next scheduled CMC or alternatively to immediately file a request for mediation with the Tribunal in advance of the next scheduled CMC.

FACTS, ISSUES, ADMISSIONS, DISCLOSURE

[19] The Tribunal made inquiries with the parties with a view to identifying the facts or evidence that might be agreed upon and identifying the issues arising in the Appeals.

[20] The Appellants Hales, Fortin and the BIA, in their Synopsis, had identified 19 issues. The Synopsis filed by May did not identified specific numbered issues, but in the Synopsis filed by the City in Response, 10 issues were identified. Minnow Lake identified two issues.

[21] As indicated above, due to the form of the Motion, and as confirmed by the parties, based on the materials filed, that 6 of the 19 issues raised by Hales, Fortin and the BIA were challenged by the City on the basis of jurisdiction. Unfortunately the parties collectively, upon attending the CMC, had not turned their minds to identifying, defining or narrowing the issues raised in the Appeal. The Appellants suggested that it would be prudent to postpone the confirmation of the List of Issues until the Motions were adjudicated.

[22] The parties were advised by the Tribunal that there was no reason to postpone addressing the matter of the issues, or any agreed statement of facts as suggested, and that it was insufficient for the parties to collectively appear before the Tribunal at the CMC without having discussed the possibility of an agreed statement of facts or a List of Issues in preparation for the CMC. The parties are reminded that under LPATA, there are timelines established by regulation for the Tribunal to dispose of *Planning Act* appeals. LPATA and Rule 26.20 require the parties and the Tribunal to utilize the CMC as a means to expediting the hearing and determination of appeals. This obligates the parties to attend to the CMC prepared to address all procedural matters in a meaningful and productive fashion so that the parties can move forward to a final hearing without delay.

[23] Following some discussions while the Tribunal stood down, the parties confirmed that they would be in a position to provide a list of all other issues beyond those that are

subject to the Motions to the Tribunal within two weeks of the CMC. The Appellants will provide their revised List of Issues to the City within one week of the CMC and the City will then assume responsibility for compiling and providing the Issues List to the Tribunal within two weeks of the CMC. The Tribunal will determine which of the remaining six issues, which are the subject matter of the Motions, might be added to that Issues List.

[24] The final form of the List of Issues will be determined at the next CMC and shall then govern the hearing of the Appeals.

[25] As indicated above, there are contested issues relating to the production of certain documents, which will be addressed within the determination of the Motions, and matters of disclosure will be addressed by the Tribunal in its rulings on the Motions.

FORMAT OF HEARING

[26] Upon a review of the Municipal Record, the Synopses filed by the Appellants and the City and the respective records of the parties, the Tribunal has determined that there shall be an oral hearing with the presentation of argument by the parties on the date indicated herein.

[27] The following shall be allocated time permitted for each of the parties to present argument at the oral hearing, in the order indicated, following the questioning of the witnesses as directed in this CMC Decision and Order:

Hales, Fortin and the BIA	75 minutes
May	75 minutes
Minnow Lake	75 minutes
City	75 minutes
Applicant	75 minutes
Gateway	75 minutes

DIRECTION BY THE TRIBUNAL—EXAMINATION OF WITNESSES

[28] Pursuant to s. 33(2) of LPATA and Rules 26.23 and 26.24 of the Tribunal Rules, the Tribunal hereby directs that arrangements be made by the identified parties for the production of the following witnesses at the hearing of the Appeals.

To be produced by Fortin, Hales and the BIA:

- Robert Dragicevic
- Rowan Faludi

To be produced by Minnow Lake:

- Alexander Bowman

To be produced by the City:

- Alex Singbush
- Jason Ferrigan
- Eric Taylor
- Robin Kell

To be produced by Applicant:

- Karl Tanner

[29] Each of the witnesses to be produced for examination by the Tribunal shall attend with all written materials which he or she has in their possession which relate to the matters before the Tribunal in these appeals.

FURTHER CMC

[30] Due to the fact that all necessary procedural matters have not been finally determined for the purposes of the hearing of these Appeals, the Tribunal did not schedule another CMC.

[31] Since the Tribunal will be receiving the materials on the Motions through December and into the beginning of January, it is unknown as to when the Tribunal will render its decision on the Motions. Accordingly, the next CMC will occur on a date and time to be determined, and as advised to the parties by the Tribunal. The next CMC may be conducted by telephone conference call.

HEARING DATE

[32] There was some discussion at the CMC of the stated case that is to be heard by the Divisional Court, which involves procedural matters for the hearing of these and other planning appeals under the provisions of LPATA and the revised Act. The Court is being asked to provide an opinion on apparent restrictions in LPATA on the ability of parties to question witnesses and affiants who may be called for examination by the Tribunal. The opinion of the Court could therefore affect the procedures at the hearing of these appeals as well as the length of the hearing.

[33] Under the circumstances, with the outstanding Motions, in the absence of the opinion of the Divisional Court on the stated case, and the intention of the Tribunal to undertake the examination of the various identified witnesses, it is premature to schedule the date of the oral hearing of the Appeals at this time. The hearing date will be scheduled by the Tribunal at, or following, the next CMC.

NOTICE OF POSTPONEMENT

[34] Due to the additional time that is now required to deal with the matters raised in the Motions now before the Tribunal, pursuant to s. 1(2) of O. Reg. 102/18 of LPATA, it

is necessary to postpone the time frame provided for in the legislation in order to secure a fair and just determination of the Appeals. The Tribunal advised the parties that the timelines for the hearing were postponed as of the date of the CMC. A Notice of Postponement has been accordingly be issued by the Tribunal.

[35] The Panel Members for this CMC shall remain seized for the purposes of continuing case management and the conduct of the further CMC.

[36] No further notice is required.

“C. Conti”

C. CONTI
VICE-CHAIR

“David L. Lanthier”

DAVID L. LANTHIER
MEMBER

“S. Jacobs”

S. JACOBS
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

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